

RECEIVED

MAY 17 1999

DOCKET FILE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

MAY 17 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Communications Assistance for)
Law Enforcement Act)
)

CC Docket No. 97-213

**SPRINT PCS COMMENTS CONCERNING CALEA
REVENUE ESTIMATES OF FIVE MANUFACTURERS**

Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint PCS"), would like to respond to the Commission's invitation to comment on the aggregated "revenue estimates" the Commission compiled based on confidential submissions of five major equipment vendors.¹ However, given the wide variance in the factual assumptions each vendor used — assumptions that have not been disclosed publicly — there is no assurance that the aggregated data reflects accurately what it purports to reflect: the total cost industry would incur in implementing the J-Standard and punch list. Indeed, the Office of Engineering and Technology ("OET") appears to acknowledge that the published data *understates* the total sum carriers would actually pay to implement the J-Standard and punch list.²

At the outset, Sprint PCS must express its surprise that certain vendors were able to submit "revenue estimates" concerning the punch list. Several weeks ago,

¹ See Public Notice, "Comment Sought on CALEA Revenue Estimates of Five Manufacturers," CC Docket No. 97-213, DA 99-863 (May 7, 1999).

No. of Copies rec'd
List ABCDE

074

one of Sprint PCS' vendors provided a summary of its development requirements for a J-Standard CALEA solution. The vendor was unable to provide pricing information and did not furnish any development information concerning the punch list items. This seems to suggest that the data it had earlier submitted to the Commission is so unreliable that it was unwilling to share the same data with Sprint PCS (and, accordingly, make contract commitments based on the data).

In any event, Sprint PCS agrees that the pricing data submitted by each vendor constitutes sensitive business information warranting confidential treatment, because the disclosure of one vendor's estimates to competing vendors could cause competitive harm.³ Nevertheless, as both the Commission and courts have held, the Commission cannot rely on this data in this docket without first giving the interested parties a meaningful opportunity to challenge it:

[I]nterested parties [must] have a full opportunity to participate in the [rulemaking] proceeding by providing a different perspective on materials that may be relied upon by the agency. . . . [I]nterested parties may not be deprived of the opportunity to challenge [data submitted to the Commission].⁴

Historically, the Commission has met the requirements of the Administrative Procedures Act by requiring persons wanting to review confidential data to execute a

² *Id.* ("OET notes that the revenue estimates supplied by the five manufacturers *do not represent all* CALEA-related software and equipment revenues anticipated by these manufacturers for U.S. cellular, broadband PCS, and wireline carriers.") (emphasis added).

³ See *CALEA Vendor Confidentiality Order*, DA 99-412, at ¶ 4 (March 2, 1999), *recon. pending*, DoJ/FBI Petition for Reconsideration (filed March 31, 1999).

⁴ *Confidential Information Treatment Order*, 13 FCC Rcd 24816, at ¶ 44 (Aug. 4, 1998). See also *Westinghouse Electric v. Nuclear Regulatory Comm'n*, 555 F.2d 82, 95 (D.C. Cir. 1977) (Confidential information may not be submitted "under conditions which will in effect deprive other interested parties of the opportunity to challenge it before the agency or upon judicial review.").

protective order.⁵ In this instance, the Commission has chosen to pursue a different course: aggregating the data submitted so that the confidentiality of vendor-specific information is not revealed. While the use of the “aggregated data” method addresses the vendor confidentiality issue, it complicates public review of the data.

Sprint PCS is not opposed to the use of the aggregated data approach *per se*. However, aggregated price estimates can have value (and, therefore, can be relied on by the Commission) only under two conditions: (1) all vendors use the same set of core assumptions, and (2) the Commission publishes those assumptions so interested parties can challenge their validity and accuracy.

Here, the OET has itself recognized that each vendor has used different (and in some instances, inconsistent) factual assumptions in developing their estimated revenues. Among other things,

- Some vendors apparently based their prices not on what they could charge carriers, but rather by what they would charge the government for a national buyout (although such a buyout is not certain);
- Some vendors apparently included capabilities not included by other vendors;
- Some vendors apparently included hardware costs, while others did not; and
- The vendors apparently used different methodologies in determining the number of switches in which their CALEA solutions would be installed, directly impacting their estimated pricing.⁶

It is not apparent how any aggregated estimates can be considered valid when the inputting parties used such widely varying assumptions in developing their price estimates.

⁵ See, e.g., *Confidential Information Treatment Order* at ¶ 45.

⁶ See *Public Notice*, note 1 *supra*, at ¶ 4.

Price estimates can be valid — but only if there is consensus over the factual assumptions used in developing these estimates. Aggregating the data is acceptable — but only if one has confidence in the integrity and consistency of the individual inputs.

Sprint PCS submits that under the Administrative Procedures Act, the Commission must adopt one of two courses: (1) permit interested parties to review the confidential data subject to a suitable protective order, or (2) ask the manufacturers to resubmit their estimates once the Commission develops, after public comment, a set of factual assumptions that all vendors are to utilize. Unless the Commission takes one of these two steps, Sprint PCS and other industry members will be deprived of their legal right to challenge the accuracy of the data submitted.

Several additional brief comments are in order. First, the cost to purchase new software and hardware constitutes only one cost component carriers will incur in complying with CALEA. The Commission must also consider the additional costs carriers will incur in installing, operating, and maintaining the equipment. One vendor has told Sprint PCS that the costs to engineer and install its CALEA solution hardware will add approximately 35% to the overall purchase price of the hardware.

Moreover, Sprint PCS uses four different switch types in its network. Each vendor is developing its own CALEA delivery box that is incompatible with the delivery boxes other vendors are developing (because each vendor has chosen to use a proprietary signaling protocol in exchanging information between its switch types and its respective CALEA delivery box). Thus, if Sprint PCS were to utilize the J-Standard so-

lution for its CALEA compliance,⁷ it would be required to operate, maintain, and train employees to use four different types of delivery boxes that perform the same function.

Second, Sprint PCS finds the aggregated data troubling, even if one were to assume its reliability. Although CMRS providers own and operate only a small percentage of the total switches operated by all telecommunications carriers, the data indicates that CMRS providers would fund a disproportionate share of the development costs: 57% of the total cost of developing the punch list features (\$234 million of \$414 million) and 44% of the total cost of developing the J-Standard/punch list solution (\$582 million of \$1.33 billion).

The FBI presumably will pay for most of the cost that landline carriers are projected to incur (\$749 million) because most landline switches were installed before January 1, 1995.⁸ Accordingly, landline carrier implementation of the J-Standard/punch list should have little impact on the rates paid by landline customers.⁹

In contrast, all PCS switches and many cellular switches were installed or deployed after the January 1, 1995 grandfather date (at least as the FBI has interpreted the

⁷ As the Commission has recognized, "compliance with the industry standard is voluntary, not compulsory. As a result, carriers are free to develop CALEA solutions in any manner they choose. Thus, a carrier may choose to utilize an industry standard as a safe harbor, or they may choose to implement other solutions that meet the capability requirements of Section 103." *CALEA J-Standard/Punch List NPRM*, CC Docket No. 97-213, FCC 98-282, at ¶ 32 (Nov. 5, 1998).

⁸ Section 109(b)(2) of CALEA states that carriers with equipment "installed or deployed on or before January 1, 1995" have no obligation to modify their equipment unless the government agrees to pay for the modifications. *See* 47 U.S.C. § 1008(b)(2). Importantly, the FBI is not required to reimburse carriers for equipment installed before 1995. It is not known what vendors will do if the FBI chooses not to reimburse pre-1995 equipment (*e.g.*, whether they will increase their prices to CMRS providers to offset the unrealized revenues from landline carriers).

⁹ This assumes, of course, that the FBI actually reimburses carriers for "all reasonable costs directly associated with the modifications performed . . . to establish the capabilities necessary to comply with" CALEA. 47 U.S.C. § 1008(a).

Act). This means that PCS carriers will not receive government reimbursement for installing the J-Standard solution and that, as a result, the new costs will be passed on to mobile customers.

As the Commission has noted,¹⁰ Section 107(b) of CALEA permits it to include challenged capabilities that may otherwise meet the Section 103 capability requirements only if the capabilities can be implemented by cost-effective methods with a minimal impact on the prices paid by residential customers.¹¹ Even if one were to assume the accuracy of the underlying data and to overlook the fact that the estimates understate the prices carriers would actually pay, it is clear that J-Standard/punch list implementation will be rate-impacting for mobile customers.

¹⁰ See *CALEA J-Standard/Punch List NPRM*, at ¶¶ 79, 87, 94, 100, 105, 110, 115, 122, and 128.

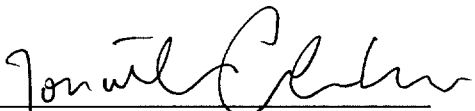
¹¹ See 47 U.S.C. § 1006(b)(1) and (3). There is, therefore, no basis to the FBI's assertion that "cost considerations bear only incidentally upon the Commission's primary task under section 107." FBI Petition for Reconsideration, CC Docket No. 97-213, at 4 (March 31, 1999).

Finally, regardless of the Commission's decision over whether it will rely on the aggregated price estimates, it is important that the Commission's order not pre-judge the legal right of carriers to file "reasonably achievable" petitions pursuant to Section 109(b) of CALEA.¹² What may be reasonably achievable for one carrier, may not be reasonably achievable to another.

Respectfully submitted

SPRINT SPECTRUM, L.P.,
d/b/a SPRINT PCS

By:


Jonathan M. Chambers
Vice President, Sprint PCS
1801 K Street, N.W., Suite M112
Washington, D.C. 20006
(202) 835-3617

Joseph Assenzo
General Attorney, Sprint PCS
4900 Main, 12th Floor
Kansas City, MO 64112
816-559-1000

May 17, 1999

¹² Section 109(b) specifies that a carrier may petition the Commission to determine that compliance with the assistance capability requirements of Section 103 is not "reasonably achievable" — that is, "compliance would impose significant difficulty or expense on the carrier or on the users of the carrier's system." 47 U.S.C. § 1008(b)(1).

Certificate of Service


I, Tony Traini, hereby certify that on May 17, 1999, I caused to be served, by first-class mail, postage prepaid (or by hand where noted) copies of these Sprint PCS comments.

*Christopher J. Wright
General Counsel
Federal Communications Commission
The Portals, Room 8C755
445 12th Street, S.W.
Washington, D.C. 20554

*Dale Hatfield, Chief
Office of Engineering and Technology
Federal Communications Commission
The Portals, Room MSC 1300
445 12th Street, S.W.
Washington, D.C. 20554

*Thomas Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
The Portals, Room 3-C207
445 12th Street, S.W.
Washington, D.C. 20554

*International Transcription Service
1231 20th Street, N.W.
Washington, D.C. 20036



Tony Traini